No. 275

In the Supreme Court of the United States

October Term, 1957

LEON O. MANZANILLO, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

BRIEF FOR THE UNITED STATES IN OPPOSITION

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The order of the Court of Claims dismissing the complaint (App. A., *infra*, p. 11) is not reported.

JURISDICTION

The judgment of the Court of Claims was entered on February 15, 1957. By order of the Chief Justice, dated May 10, 1957, the time for filing a petition for a writ of certiorari was extended to and including July 15, 1957. The petition for a writ of certio-

rari was filed on July 15, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the United States can be held liable for amounts allegedly lent by a Filipino civilian to a Filipino guerrilla unit during the Japanese occupation of the Philippines, where the purported guerrilla unit was never a part of the United States Army and was never recognized as a bona fide irregular element of the Philippine Army.

STATEMENT

This is an action in the Court of Claims seeking to obtain from the United States the amount of cash allegedly advanced by petitioner to Filipino guerrillas during the Japanese occupation of the Philippines in World War II. The court below dismissed the complaint for failure to state a claim upon which relief could be granted and as barred, in part, by limitation. The allegations of the amended petition in the Court of Claims [1] may be summarized as follows:

When the Philippine Army had been ordered into the service of the Armed Forces of the United States in the Far East (USAFFE) by military order of the

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[1] Despite petitioner's statement that his petition was filed on May 5, 1950 (Pet. 6), it appears that his petition in the Court of Claims was filed on November 30, 1949. The Government filed a general denial on January 9, 1950 (R. 1). An amended petition was filed September 8, 1955, and the Government filed a motion to dismiss on October 7, 1955 (R. 25-29). The amended petition was dismissed by an order entered February 15, 1957 (App. A, *infra*, p. 11).

President in 1941 (R. 4), "various duly authorized officers" requisitioned supplies "in order successfully to prosecute military operations against the Enemy * * * with the express or implied authority of the Commander-in-Chief of USAFFE" (R. 5). One such officer, Lt. Col. Isidoro Aberin, Inf. (PA) USFIP, had been "inducted into the USAFFE under authority of Col. John P. Horan, commanding the 43rd Inf. (PS) USAFFE", and on September 29, 1942 "assumed command of all Cushing Guerrillas, known as Cushing Regiment, USFIP" (R. 5-6).

It was alleged that on six different occasions between July 28, 1943, and October 1, 1944, petitioner made cash loans to Aberin, totaling ₱335,000 in Philippine pesos and ₱2,250,000 in Japanese occupation pesos, with a total monetary equivalent in Philippine pesos of ₱1,168,451.00, or $584,225.50 (U.S.) (R. 7-8). These loans were sought by Aberin "for the purpose of securing necessary ammunition and supplies" (R. 7).[2] The petition did not state that the "Cushing Regiment" was a recognized guerrilla unit of the Philippine Army.

The petition further alleged that "under date of March 30, 1948"[3] petitioner filed a claim for repayment of these loans with the Army Claims Service in

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[2] The amended petition in the Court of Claims contained a second count seeking recovery for alleged procurements of medical supplies by a United States Army officer. This count apparently has been abandoned, since no mention of it is made in the petition for certiorari (R. 9-10).

[3] Petitioner's claim was filed with the Army Claims Service on April 29, 1949.

the Philippines, and was advised on August 10, 1949 that his claim had been disallowed (R. 11-12).[1]

The Government moved, in October 1955, to dismiss for failure to state a claim (R. 25). Following this Court's decision in *Soriano* v. *United States*, 352 U.S. 270, the Court of Claims dismissed the petition as barred, in part, by limitations under *Soriano*, and for failure to state a claim under the Court of Claims'

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[1] It seems impossible to reconcile either the dates or the amounts of the various loan claims presented by petitioner at different times prior to and during this proceeding. The claim presented to the Army Claims Service in April 1949 was based on alleged cash loans totaling ₱110,000.00 (Philippine) and ₱650,000.00 (Japanese) made at unspecified times from July 1942 to December 1943 and additional cash loans totaling ₱225,000.00 (Philippine) and ₱1,600,000.00 (Japanese) made at unspecified times between January 1943 and December 1944, or a grand total of ₱2,585,000.00 in Philippine and Japanese currency. The complaint (R. 7-8) alleges loans in the same amount (₱2,585,000.00 or an equivalent in Philippine pesos of ₱1,168,151.00), but asserts that they were made from July 1943 to October 1944 (not July 1942 to December 1944), and does not break the loans down into two groups.

This confusion is compounded by the petition for certiorari (Pet. i) in which the equivalent value of the loans made from July 1943 to October 1944 is reduced from ₱1,168,151.00 to ₱883,151.00. This would appear to be a combination of a typographical error (₱883,151.00 for ₱833,151.00) and an omission of the claims for loans of Philippine Currency (see the Amended Petition in the Court of Claims, p. 6). But we are unable to give an explanation of the final claim figure of $147,500.00. (Pet. 5) The claimed amount would appear to be either $205,250, treating the last four items as not time-barred, or, on petitioner's theory that only two items are timely (Pet. 5), $60,250,

decision in *Logronio* v. *United States*, 132 C. Cls. 596.*

ARGUMENT

1. Petitioner originally sought to recover from the United States over one half million dollars for currency loans allegedly made by him to a Philippine guerrilla officer during the Japanese occupation of the Philippines. Although he concedes (Pet. 5) that the greater part of his claim is now time-barred under this Court's decision in *Soriano* v. *United States*, 352 U.S. 270, he argues that some of the alleged loans are not barred since suit was filed within six years, and that these advances constitute binding obligations of the United States.

While the petition below alleged that the loans were made to an officer who had been "inducted into the USAFFE" (amended petition below, p. 3) and were to be used for the purpose of obtaining supplies for the "Cushing Regiment," the petition significantly omits any allegation that the "Cushing Regiment" was a recognized guerrilla unit of the Philippine Army (Pet. 3-5). To hold the United States responsible for debts based on Philippine Army procurement, however, petitioner was required at a minimum to allege that the procurement was for a unit which constituted, or had been recognized as, a part of the Philippine Army. Only if this unit was

* Although the Court of Claims' order (App. A, *infra*, p. 11) does not specify in detail the grounds on which the court relied, the order grants the Government's motion to dismiss which was based on *Logronio*, and also refers to this Court's decision in *Soriano*.

part of the recognized Filipino forces serving under United States (USAFFE) command in the Philippines would there be any basis for contending that the United States was liable for its procurement, for it is well settled that the United States can be held liable only on contracts made by its own agents, and a guerrilla band without authorization or official status, even of a retroactive character, clearly could not contract to bind the United States. *United States* v. *North American Transportation & Trading Co.*, 253 U.S. 330; *Sutton* v. *United States*, 256 U.S. 575; *Eastern Extension, Australasia & China Telegraph Co.* v. *United States*, 251 U.S. 355; *United States* v. *McDougall's Administrator*, 121 U.S. 89; *Hodges* v. *United States*, 125 C. Cls. 405; *Caltex (Philippines), Inc.* v. *United States*, 129 C. Cls. 605, certiorari denied, 348 U.S. 926. Since there is no allegation that the "Cushing Regiment" was part of the American Army, or of the Philippine Army serving with American forces in the Philippines, the petition was properly dismissed for failure to state a claim against the United States even if the legal theory advanced by petitioner were otherwise accepted. See *Hodges* v. *United States*, 125 C. Cls. 405.

2. Petitioner's failure to allege in the Court of Claims that his alleged loans were made to a recognized guerrilla unit sharply distinguishes this case from the issue on which certiorari was granted but not reached in *Soriano* v. *United States*, 352 U.S. 270. *Soriano* involved a claim based on alleged requisitions of property by Filipino guerrilla units operating during the Japanese occupation of the

Philippines, which were subsequently recognized as irregular elements of the Philippine Army and therefore as part of United States Armed Forces Far East (USAFFE) which included elements of the Philippine Army operating under American command. The Court of Claims determined that the United States had no direct liability for procurement even for recognized Philippine guerrilla units, and certiorari was granted on that issue. Subsequently, before argument, the Court, on petitioner's motion, requested briefs on the further question of whether the claim was time-barred. The decision sustaining the court below (352 U.S. 270) passed only on the limitations question.

The question, therefore, on which certiorari was granted but not reached in *Soriano* was whether procurement for recognized Philippine Army irregulars, because of their status as members of that Army, created an obligation of the United States. The very foundation of the claim in *Soriano* was the fact that guerrilla unit there involved had been officially recognized as part of the Philippine Army, a fact which the Government conceded. Here, there is no allegation that the "Cushing Regiment" had been recognized as an element of the Philippine Army.[6]

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[6] Although it might seem that we are urging an unduly strict construction of the petition below, we believe that the failure to allege that the guerrilla unit involved was "recognized" was no oversight. Army files indicate that the facts are as follows:

No guerrilla unit referred to as the "Cushing Regiment," has been recognized as part of the Philippine Army either

It follows that this proceeding does not present the question (not reached by the Court in *Soriano*) whether recognized Philippine Army irregulars had authority to bind the United States on procurement contracts.

3. Even assuming that the complaint could be read as stating a claim for procurement by recognized members of the Philippine Army, the United States, in our view, could not be held responsible for recognized Philippine Army procurement which could create a claim only against the Philippine Government, and not against the United States. See the main brief for the United States in *Soriano*, No. 49, October Term, 1956, at pp. 10-54. Without repeating the

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by the Philippine or the United States Governments. The 121st Infantry, USAFIP, NL (referred to in petitioner's Appendix F, Pet. 45), was a recognized guerrilla unit of the Philippine Army commanded by Major Walter Cushing until July 1942 when he turned over his command to Captain William G. Peryam. After Peryam's capture in March 1943, the unit was commanded by Colonel George Barnett until the liberation. Aberin never commanded the 121st Infantry or any other bona fide guerrilla unit, and has not been recognized as a guerrilla officer of the Philippine Army.

The "Cushing Regiment" referred to in the complaint and petition is presumably identical with the "11th Infantry Regiment, Cushing Brigade, Folsom Fil-American Guerrillas" which was denied recognition as a bona fide guerrilla organization in February 1947, on Isidoro Aberin's petition on behalf of this organization. (See letter to Isidoro Aberin, App. B, *infra*, p. 12.)

In the light of our understanding of what the proof would show, we believe that petitioner's failure to allege that the "loans" were for a guerrilla unit recognized as an element of the Philippine Army must be taken at its face value.

detailed argument set out in our *Soriano* brief to which this Court is respectfully referred, we submit that the Court of Claims was correct in dismissing the present complaint on the overriding ground that the United States cannot be held directly responsible for Philippine Army procurement.

4. The question raised is now of no general importance. The present case appears to involve the only active claim for guerrilla procurement not barred by the statute of limitations under the *Soriano* decision.[7]

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[7] Although requesting the Court first to consider the merits, the United States stated in its supplemental brief in *Soriano* (p. 14) that a decision favorable to the Government on either of the grounds raised in that proceeding would be dispositive of all Filipino guerrilla cases then pending in the Court of Claims. This statement was in error in so far as a decision on the statute of limitations failed to dispose of a minor portion of this one case, and a portion of the case of *Osmena* v. *United States*, No. 19127. The petitioner in the *Osmena* case has not communicated with the United States since the petition was filed in January 1950, mail sent to the record address is returned unopened, and the commissioner of the Court of Claims has been unable to locate him through advertisements. In June 1957, the Government moved to dismiss the petition for failure to prosecute.

Although we are hesitant to make another categorical statement, a thorough review indicates no other guerrilla case pending at the time of *Soriano* which is not time-barred. Since the *Soriano* decision, several petitions have been filed in the Court of Claims on behalf of over a hundred individuals on the theory that Filipino guerrillas were a "contracting agency" within the meaning of the Contract Settlement Act (see 41 U.S.C. 103, 117). However, that Act required a contracting agency to be authorized to make contracts pursuant to the First War Powers Act (50 U.S.C.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

GEO. S. LEONARD,
Acting Assistant Attorney General.

MELVIN RICHTER,
WILLIAM W. ROSS,
Attorneys.

AUGUST 1957

App. 611). And in any event, in fixing a terminal date for claims under the Contract Settlement Act (68 Stat. 300) Congress did not waive the statute of limitations. We believe, therefore, that the position is wholly without merit. It is not raised in this case.

APPENDIX A

UNITED STATES COURT OF CLAIMS.

VICTORINO SANTIAGO, ET AL

vs.

THE UNITED STATES

* * * *

No. 49386 [Manzanillo v. United States]

* * * *

CLERK'S OFFICE

Washington, D. C., February 15, 1957

To Attorney of Record and
Assistant Attorney General,
and Commissioner

Sirs:

Please take notice that in the above-entitled cause there has been entered this day on the defendant's motion to dismiss petition, the following order:

ALLOWED; see also Soriano v. U.S., Sup. Ct., decided Jan 14, 1957.

DEFENDANT'S MOTION TO DISMISS PETITION ALLOWED, AND PETITION DISMISSED

Respectfully,

/s/ WILLARD L. HART
Clerk, Court of Claims.

APPENDIX B

LETTER TO ISIDORO ABERIN

HEADQUARTERS
PHILIPPINES-RYUKYUS COMMAND
OFFICE OF THE COMMANDING GENERAL
APO 707

GSCPU 091 PI
4 Feb. 1947

Mr. Isidro [sic] Aberin
Baguio, Mt. Province

Dear Mr. Aberin:

The Commanding General has directed th. you be informed that the 4th Infantry Regiment, Cushing Brigade, Folsom Fil-American Guerrillas, purporting to be a guerrilla organization under your nominal control, is not favorably considered for recognition as an element of the Philippine Army.

A set of general requirements for guerrilla recognition, established by General MacArthur during the liberation of the Philippines, has been used as a guide in considering the record of this unit. After careful investigation and full consideration all available substantiating records and testimony of witnesses having pertinent knowledge, recognition of this guerrilla unit is not deemed to be warranted because of reasons mentioned below:

a. The unit was not maintained satisfactorily in the field in opposition to the enemy.

b. Activities of the unit did not contribute materially to the eventual defeat of the enemy.

c. Sphere of operations and unit strength claimed by the unit were not commensurate with the nature of the terrain, limitation of communication facilities,

and the degree of anti-resistance activities of the Japanese in the area during the period concerned.

d. Unit did not show satisfactory continuity of activity and organization.

It is requested that you comply with the provisions of Executive Order No. 68, by the President of the Philippines, dated 26 September 1945, copy attached.

Sincerely yours,

Certified True Copy:

Signed: Nelson A. Voorhees

Typed: NELSON A. VOORHEES
Major, Infantry.

JOHN R. SPARK—Typed
Maj. AGD
Asst. Adj. Gen.

1 Incl.
Executive Order No. 68

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